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To: 415 352 2625

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1 Irving L. Berg (SBN 36273)  
 2 THE BERG LAW GROUP  
 3 145 Town Center, PMB 493  
 4 Corte Madera, California 94925  
 5 (415) 924-0742  
 6 (415) 891-8208 (Fax)  
 7 [irvberg@comcast.net](mailto:irvberg@comcast.net) (e-mail)  
 8 ATTORNEY FOR PLAINTIFF

Tomio B. Narita  
 SIMMONDS & NARITA LLP  
 44 Montgomery Street, Suite 3010  
 San Francisco, CA 94104-4816  
 Facsimile (415) 352-2625  
 Tel. (415) 283-1000  
[tomio@snllp.com](mailto:tomio@snllp.com)  
 ATTORNEY FOR DEFENDANTS

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DAMARIS CRUZ, individually and on  
 behalf of all others similarly situated,

Case No. C 07 5688 SC

Plaintiffs,

JOINT CASE MANAGEMENT  
 STATEMENT

v.

MRC RECEIVABLES CORPORATION,  
 et al.

Date: February 22, 2008  
 Time: 10:00 a.m.  
 Dept: Courtroom 1 - 17<sup>th</sup> Floor  
 Judge: Hon. Samuel Conti  
 District Court Judge

Defendants.

The parties, by their attorneys, file their Joint Case Management Statement pursuant to L.R. 16-9, addressing all of the topics set forth in the Standing Orders of All Judges of the Northern District of California.

1. Jurisdiction and Service. The Plaintiff contends that this Court's jurisdiction is based on 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

The parties are not aware of any issues regarding personal jurisdiction or venue.

At this time, Plaintiff is not aware of any additional parties to be served, but asks that the time for service remain open until the completion of discovery.

Defendants ask the Court to set a deadline in 30 days for addition of any new parties and 60 days for service of same.

2. Facts: Plaintiff filed her class action complaint on November 8, 2007. Plaintiff alleges receiving a two-sided form collection letter, Exhibits A and B to the Complaint, which

1 represented that the letter was from Defendant, A. Syran, Senior Vice President, Operations and  
2 Marketing. Plaintiff challenges the practice of Defendants' sending a collection letter as being  
3 from a high-ranking officer of Defendant Midland as a misrepresentation of the high-ranking  
4 officer's involvement in the authorization and sending of the collection letter. The reverse side  
5 of the collection letter, Exhibit B to the Complaint, states:

6 As required by law, you are hereby notified that a negative credit  
7 report reflecting on your credit record may be submitted to a credit-  
8 reporting agency if you fail to fulfill the terms of your credit  
9 obligations.

10 Plaintiff alleges the statement is false, as a negative credit report had previously been made to the  
11 credit bureau, both by Defendant Midland and by the original credit grantor.

12 Defendant's Answer to the Complaint was filed on December 8, 2007. Defendants deny  
13 that the letter violates the FDCPA. Defendants have answered the Complaint and they plan to  
14 file a motion for summary judgment.

15 3. Legal Issues. Issues are (a) whether the collection letter, Exhibit A, is false and  
16 violative of the anti-deception provisions of the FDCPA; and (b) whether the threat to make a  
17 negative credit report to the credit bureau is false and violative of the anti-deception provisions of  
18 the FDCPA and a coercive tactic resulting in an unfair and unconscionable debt collection  
19 practice. All of these representations are viewed from the perspective of a hypothetical least  
20 sophisticated consumer. *Swanson v. Southern Credit Service, Inc.*, 869 F.2d 1222, 1225 (9<sup>th</sup> Cir.  
21 1988).

22 Defendants contend that the letter attached to the complaint accurately sets forth the terms  
23 of a settlement opportunity that Defendants were willing to honor. The Defendants deny that the  
24 settlement letter contains any false statements, and they deny that any debtor would be confused  
25 or misled by the contents of the letter. In fact, in a prior case filed by the Plaintiff's counsel, this  
26 Court ruled that the identical settlement letter did not violate the FDCPA, and the Ninth Circuit  
27 affirmed this Court's ruling. See *Kalinina v. Midland Credit Management, Inc.*, 2004 WL  
28 3187150 (N.D. Cal. Aug. 10, 2004), *aff'd* 2006 WL 22779326 (9<sup>th</sup> Cir. Aug. 9,  
2006)(unpublished).

1 Similarly, the Seventh Circuit has also ruled that this identical settlement letter does not  
2 violate the FDCPA. See *Jackson v. Midland Credit Management, Inc.*, 445 F. Supp. 2d 1015 (N.  
3 D. Ill. 2006), *aff'd sub nom. Evory v. RJM Acquisitions Funding LLC*, 505 F. 3d 769 (7<sup>th</sup> Cir.  
4 2007).

5 No debtor would be confused by the typed signature of the Midland executive, A. Syran,  
6 which appears at the bottom of the letter. The notice regarding credit reporting on the revers side  
7 of the letter is not false, misleading or confusing in violation of the FDCPA. In fact, the  
8 language challenged by Plaintiff is truthful and is expressly required by California state law.

9 4. Motions. Plaintiff has set her motion for class certification to be heard before this  
10 honorable court on March 21, 2008.

11 Defendants are preparing a motion for summary judgment and they plan to file it  
12 promptly. Defendants will also request that any hearing on the motion for class certification be  
13 deferred until after the Court rules on the summary judgment motion.

14 5. Amendment of Pleadings. Plaintiff at this time does not anticipate amending the  
15 Complaint. Plaintiff asks that the deadline for amendment be set at the completion of discovery.  
16 Defendants ask that the deadline to amend be set in 30 days.

17 6. Evidence Preservation. Plaintiff asks that the Court issue an evidence  
18 preservation order.

19 7. Disclosures. Plaintiff has complied with the initial disclosure requirements.  
20 Defendants' initial disclosures will be submitted by February 15, 2008.

21 8. Discovery. Plaintiff propounded her first set of discovery requests to Defendants  
22 on January 19, 2008.

23 9. Class actions.

24 (a) The class action is maintainable under Paragraphs 2 and 3 of the Federal Rules of  
25 Civil Procedure.

26 (b) The class is all California consumers who received the collection letter, attached as  
27 Exhibits A and B to the Complaint, within the one year immediately preceding the filing of the  
28 Complaint.

1 (c) Plaintiff is entitled to maintain the action under Fed. R. Civ. Proc. 23(a), as (i) the  
2 class is so numerous that joining all of the members would be impracticable, (ii) there are  
3 questions of law or fact common to the class, (iii) the claims or defenses of the representative  
4 party is typical of the class members, and (iv) the representative party will fairly and adequately  
5 protect the interests of the class.

6 (d) The proposed date for the Court to consider whether the case can be maintained as a  
7 class action is March 21, 2008. Defendants ask that class certification be deferred after  
8 Defendants file their summary judgment motion.

9 10. Related cases. Plaintiff is not aware of any related cases.

10 11. Relief. Plaintiff seeks statutory damages of \$1,000 and relief for the Class, of the  
11 lesser of a sum not to exceed \$500,000.00 or 1% per centum of Defendant's net worth.

12 12. Settlement and ADR. Plaintiff agrees to mediation under ADR auspices.

13 13. Consent to magistrate judge for all purposes. Plaintiff consents to have this  
14 matter heard by the magistrate judge for all purposes. Defendants do not consent to a magistrate  
15 judge.

16 14. Other references. Plaintiff declines references other than mediation under the  
17 ADR.

18 15. Narrowing of Issues. Plaintiff believes the issues can be narrowed by stipulation  
19 to class certification. Defendants believe their summary judgment motion will dispose of all  
20 issues.

21 16. Expedited schedule. This case is not amenable to handling on an expedited basis.

22 17. Scheduling. Plaintiff proposes that the discovery cut-off be September 1, 2008,  
23 that the date for designation of experts be August 1, 2008, that the date for hearing summary  
24 judgment motions be the week of July 1, 2008, and that the trial date be after November 1, 2008.

25 Defendants request that the hearing on the class certification motion be deferred until  
26 after the Court has heard Defendants' summary judgment motion. Defendants request that the  
27 Court set a deadline for the Plaintiff to add any new parties or new claims within 30 days of the  
28 Case Management Conference, and that all parties be served within 30 days thereafter.

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1 Defendants propose that the deadline for designation of experts should be August 1, 2008, that  
2 the discovery cutoff be set for September 1, 2008, and that the last date for any hearing on  
3 dispositive motions be set for November 17, 2008.


4 18. Trial. The trial will be a court trial, and the length of trial is expected to be 3-4  
5 days.

6 19. Disclosures of non-party, interested entities or persons. Plaintiff has no  
7 disclosures to make. Defendants' Certificate of Non-Interested Parties has been filed.


8 20. Other matters. The parties have no other matters to disclose at this time.

9 Respectfully submitted,

10  
11 Dated: 2.05.08

12   
13 Irving L. Berg  
14 The Berg Law Group  
15 Attorney for Plaintiffs

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17 Dated: 2-8-08

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19 Tomio B. Narita  
20 Simmonds & Narita LLP  
21 Attorney for Defendants  
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